be allowed. Such an argument has no merit. The said property was not sold for the purpose of redevelopment; neither the Agreement nor the supplementary agreement contains any provision to this effect. Nor can such a term be implied. Therefore whether the Respondent knew of the purpose of such purchase is immaterial. It is true that under Clause 6 of the supplementary agreement the Appellant agreed that on redevelopment of the said property he would grant an option to the Respondent to purchase a unit at a certain discount. However, as Abdul Wahab Ghows J. said, this does not make her a party to the redevelopment. Nor does it oblige the Appellant to redevelop the said property.

We now turn to the other issue in this appeal, namely, whether the Appellant is liable to reimburse the Respondent interest paid by the latter to the Trustees for the late completion of the purchase of the said property. The Agreement, as amended by the supplementary agreement, does not contain any provision imposing on the Appellant an obligation to reimburse any interest paid by the Respondent to the Trustees, and it is far from clear on what basis the Respondent is making her claim for such reimbursement. Mr. Chim on behalf of the Respondent did not really advance any argument in support of this claim. We are therefore in agreement with Mr. Wu that the Appellant is not legally liable for any interest paid by the Respondent to the Trustees.

This Appeal substantially fails and is dismissed, save and except that the Order made on April 26, 1984 is to be varied by expunging therefrom the part thereof requiring the Appellant to pay to the Respondent the sum of $5,237.96 being interest for the late completion.

As for costs, we do not think that the Respondent should be allowed the whole costs of this Appeal, and we allow her only three-quarters of the costs of this Appeal. There will be the usual consequential order that the amount deposited in Court as security for costs be paid to the Respondent or her solicitor to account of costs.

Appeal dismissed.

Solicitors : *Donaldson & Burkinshaw; Hilborne & Co.*

THE "KOHEKOHE"
M.V. "KOHEKOHE", OWNERS OF, & ORS. INTERESTED v. SUPARDI BIN SIPAN

[C.A. (Sinnathuray, Lai Kew Chai & Thean JJ.) July 1, 1985]

[Singapore – Civil Appeal No. 56 of 1983]

Tort – Negligence – Personal injuries suffered in course of employment as crew member of ship – Damages – Whether there was contributory negligence.

Damages – Leg – Amputation of right thigh – Assessment of damages.

In this appeal, the plaintiff obtained judgment in the High Court in the sum of $142,072.00 for personal injuries suffered by him in the course of his employment as a member of the crew of the ship M.V. "Kohekohe" ("the ship") against the defendants, the owners of and other persons interested in the ship. The claim was for negligence and breach of duty by the defendants, their agents or servants in the management of the ship, in particular, that the defendants had failed to provide a safe system of work. As a result of this, an accident occurred which resulted in the plaintiff having a traumatic amputation of the right thigh at the level of 1/3 inferior and 1/3 medium. For pain and suffering and loss of amenities the plaintiff was awarded $42,000 as general damages. The defendants appealed against the judgment both on liability and quantum of damages contending: (1) although the defendants were negligent in failing to provide a safe system of work, the learned judge ought to have found contributory negligence on the part of the plaintiff; (2) the figure of $42,000 awarded as general damages was taken from cases where general damages were awarded inclusive of loss of future earnings.

Held: (1) the facts showed that there was no contributory negligence on the part of the plaintiff. The defendants were wholly to blame for the accident as they had failed to provide a safe system of work;

(2) the figure of $42,000 were not taken from cases where general damages were awarded inclusive of loss of future earnings. The learned judge specifically said that the general damages of $42,000 was for "the amputation of the right leg";

(3) when damages for negligence are assessed under separate heads, and as the matters considered under the head of general damages for pain and suffering and loss of amenities are wholly different from those considered under the head of loss of future earnings, there ought not to be an overlapping in these two awards.

Cases referred to:

(1) *Lee Yew Hoe* v. *Lee Bock Huat* [1980] 2 M.L.J. 271.
(2) *R.J. McGuiness* v. *Ahmad Zaini* [1980] 2 M.L.J. 304.
(3) *Lai Wee Lian* v. *Singapore Bus Services (1978) Ltd.* [1984] 1 M.L.J. 325.
(4) *Low Kok Tong* v. *Teo Chan Pan* [1982] 2 M.L.J. 299.

COURT OF APPEAL.

Dennis Murphy for the appellants.

Mohamed bin Abdullah for the respondent.

Cur. Adv. Vult.

Sinnathuray J. (delivering the Judgment of the Court) : In this appeal, the plaintiff obtained judgment in the High Court in the sum of $142,072.00 for personal injuries suffered by him in the course of his employment as a member of the crew of the ship m.v. "Kohekohe" ("the ship") against the defendants, the owners of and other persons interested in the ship. The claim was for negligence and breach of duty by the defendants, their servants or agents in the management of the ship, in particular, that the defendants had failed to provide a safe system of work. The defendants appeal against the judgment, both on liability and quantum of damages. By way of a respondent's notice, there is also a cross-appeal by the plaintiff for a variation of the quantum of damages.

The facts are that on May 28, 1978, the ship was anchored in the port of Kuwawa, French Caledonia. Just before the accident, the ship, a bulk carrier, had completed loading nickel ore and the plaintiff and other members of the crew were engaged in closing the hatches of the ship. They had closed three of the four hatches of the ship. The accident occurred when hatch No. 4 ("the hatch") was being closed.

The hatch cover was of the concertina type. It was pulled to cover the hatch by a steel hawser operated by the anchor winch. This winch, located at the bow of the ship, was about 100 metres away from the hatch. Because of the distance of the winch from the hatch, the steel hawser had to pass through various sheaves and blocks which were attached to eye-lugs permanently fixed to the upper deck.

The plaintiff assisted in the closing of the hatch. He had to insert a pin through the hatch cover after it had been completely pulled over the hatch so as to secure it. As for the winchman, he could not see for himself when the hatch was completely covered by the hatch cover. He has to rely on two or three signalmen, one of whom was stationed near hatch No. 3 which was next to hatch No. 4.

The case for the plaintiff was that he was standing near the hatch. The cover of the hatch was being pulled by the winch. There was tension in the steel hawser. The hatch was then completely closed. The signalman at hatch No. 3 gave him a signal to close the hatch. He then crossed over the steel hawser to go to the hatch cover of the hatch to insert the pin. He was straddling the hawser having his right leg over it. Suddenly the steel hawser whipped through the right leg of the plaintiff. It had completely severed the leg from his body. After the accident, it was found that an eye-lug which was at the bollard near the hatch had been pulled out of its position and the sheaves and the block had come off together with the steel hawser.

There was evidence that two methods were used on the ship for opening and closing the hatches, the anchor winch method which was used on the day of the accident, and the crane method. We have said enough on the anchor winch method. The crane method is by the use of the crane nearest to the hatch. Wire is attached by means of a shackle to the end of the hatch cover and the wire is led through various sheaves and blocks and hooked on to the cargo hook of the crane. Then by operating the hoisting lever of the crane it will move the hatch cover and close the hatch. Only two persons would be required for this operation: there is the crane operator who sits in a small cabin high above the deck and who can see what is going on at the hatch; the other person would be at the hatch; when the hatch cover is closed he would insert the pin to prevent the hatch cover from sliding back.

The chief officer of the ship called by the defendants said that he decided to use the anchor winch method that day because of the shortage of time. The ship had been loaded with nickel ore. This was done by using the ship's cranes with grabs. When the loading was completed the ship was about to sail as the pilot had been booked. He said that it would take some time to remove the grabs from the cranes and replace them with hooks. He therefore decided, for safety reasons, to use the anchor winch method to close the hatches first. He said that the grabs could be lowered later and changed to hooks.

In his cross-examination, the chief officer said that after the accident, the anchor winch method was discarded. He agreed that the crane method was a far safer method and that it was the method recommended by the ship builders. He confirmed that the accident happened because the winchman continued heaving when the hatch cover was completely closed, and that this had caused great

stress on the steel hawser. He agreed that the safety of this method depended on the signalmen and the winchman being alert and there being good co-ordination between them.

On these facts the learned Judge found that (1) the proper method of closing and opening the hatch covers was the crane method; (2) the defendants in using the anchor winch method had failed to provide a safe system of work; (3) the winchman was negligent; and (4) the accident was caused solely by the negligence of the defendants.

At the hearing of the appeal, on liability, Mr. Murphy for the defendants submitted that although the defendants were negligent in failing to provide a safe system of work, the learned Judge ought to have found contributory negligence on the part of the plaintiff. The evidence counsel relied upon was that when the plaintiff put his right leg across the steel hawser, he put himself in a position of danger, in that he did not know at that time whether the winchman had stopped the engine of the winch. Had the winch stopped pulling, the steel hawser would have slackened, and this would have indicated to the plaintiff that it was safe for him to move across the hawser. The submission was that the plaintiff should have waited for the hawser to slacken. He ought to have known that he should not cross the hawser under tension

Mr. Abdullah for the plaintiff answered that the learned Judge had considered the question of contributory negligence and had found that there was none. He said that at the trial contributory negligence was fully argued because in his closing submission Mr. Murphy had conceded negligence on the part of the defendants and had argued that the plaintiff was negligent to the extent of 30%.

A perusal of the record of appeal shows that the real issue at the trial was whether or not there was contributory negligence on the part of the plaintiff. There are the findings of the learned Judge that the winchman was negligent and that the accident was caused solely by the negligence of the defendants. It must follow that the learned Judge had found no contributory negligence on the part of the plaintiff.

On the facts, it was common ground that the anchor winchman could not see what was happening at the hatch. For closing the hatch that day he relied on the signalmen. The signalman nearest to the plaintiff at hatch No. 3 was a crew member called Philip. When the hatch was closed the plaintiff saw Philip give the signal to stop. Philip had given the signal to another signalman who signalled the winchman. That other signalman then gave a signal back to Philip. It was after that that Philip gave the signal to the plaintiff to go and secure the hatch. The plaintiff did not respond immediately to the signal. He said that he waited for a few seconds before he jumped across the steel hawser.

When the plaintiff went over the steel hawser it had stopped moving. It is true that the hawser was under tension. On this aspect of the matter, the reliable evidence was that the hawser had to be under tension for the plaintiff to put the pin into the hatch cover. If the steel hawser was not taut the hatch cover would slip backwards and get out of alignment. The plaintiff would then find it difficult to insert the pin.

The foregoing facts, in our view, sufficiently show that there was no contributory negligence on the part of the plaintiff. We agree with the learned Judge that the defendants were wholly to blame for the accident. They had failed to provide a safe system of work.

We turn now to the quantum of damages awarded to the plaintiff. First, as a result of the accident, the plaintiff had a traumatic amputation of the right thigh at the level of 1/3 inferior and 1/3 medium. For pain and suffering and loss of amenities, the plaintiff was awarded $42,000 as general damages. The argument for the defendants was that this sum was too high a figure as there was a separate award for loss of future earnings.

We do not agree with Mr. Murphy that the learned Judge took the figure of $42,000 from cases where general damages were awarded inclusive of loss of future earnings. He had in fact rejected the argument put by Mr. Murphy that the general damages in this case should be between $40,000 and $42,000 including the loss of future earnings. The learned Judge specifically said that the general damages of $42,000 was for "the amputation of the right leg". Though he did not cite any authority for the award, it appears in the record of appeal that he was referred to two cases, *Lee Yew Hoe* v. *Lee Bock Huat*[1] and *R. J McGuinness* v. *Ahmad Zaini*.[2] In the first case Sinnathuray J. gave a young man aged 17 years employed as a bakery assistant who had an above knee amputation of his right leg $40,000 for pain and suffering and loss of amenities. In the second case Roberts C. J. in Brunei gave an expatriate oil

driller aged 34 who had an above knee amputation of his right leg B$50,000 for pain and suffering and loss of amenities. In both cases the plaintiffs obtained separate damages for loss of future earnings.

In our opinion, when damages for negligence are assessed under separate heads, and as the matters considered under the head of general damages, for pain and suffering and loss of amenities are wholly different from those considered under the head of loss of future earnings, there ought not to be an overlapping in these two awards. In this appeal we are of the view that the award of $42,000 as general damages is not out of line with other awards in similar cases; nor can the award be said to be excessive.

Secondly, for loss of earnings from the date of accident to the date of trial, the learned Judge gave the plaintiff special damages of $6,000. He had calculated the loss of earnings at $1,000 per month for six months. Somehow counsel for the defendants had misunderstood the calculation because his submission was that it was realistic to take a loss of 10 months but it was too high a figure to calculate loss at $600 per month. On the other hand, in the cross-appeal, counsel for the plaintiff contended that for the 62 months between the date of accident and the date of trial at $1,000 per month, the award for loss of earnings should be $62,000 and not $6,000.

In dealing with this question the learned Judge held that even if the plaintiff had not met with the accident, it was very doubtful that he would have been employed as a seaman throughout the period of 62 months. The shipping business was in a depressed state and a lot of able-bodied seamen were out of work. There was evidence that the bosun who was on the ship at the time of the accident was out of work for more than a year. In arriving at the amount of $6,000 calculated on the basis of $1,000 per month for six months, the learned Judge must have concluded that the plaintiff would not have found work for some time during the period of 62 months. On that basis the learned Judge had discounted a period of 56 months for that contingency. We agree with him that in assessing special damages for loss of earnings in this case that provision be made for such a contingency; however, it seems to us that a period of 56 months that had been allowed by him is far too long. It is reasonable, we think, to find that the plaintiff would have been unemployed as a seaman for a longer period than the bosun who, as already noted, was unemployed for 12 months. In our view, a fair period to allow for the plaintiff would be 24 months. Accordingly, we assess special damages for loss of earnings at $38,000 calculated on the basis of $1,000 per month for 38 months.

Thirdly, the learned Judge awarded $84,000 for loss of future earnings. To arrive at this figure, he used a set of tables, referred to by those who use them as "the annuity tables". The computation used was $600 per month for 18 years purchase. For the defendants it was contended that this sum was excessive; for the plaintiff that it was inadequate.

Now, as regards this head of loss of future earnings, at the hearing of the appeal, we were given a copy of a telex of the decision of the Privy Council in *Lai Wee Lian* v. *Singapore Bus Service (1978) Ltd.*[3] which has since been published. We have, of course, read the judgment closely. In this case their Lordships examined the methods used for calculating loss of future earnings and observed that "if confusion is to be avoided, it seems desirable that a uniform practice should be followed by all courts in the same area". We agree.

In the present appeal, at the time of the accident, the plaintiff was earning $1,200 to $1,300 a month and had a very good prospect of improving his salary. He could also work as a seaman to the age of 60. The question is what is the proper multiplicand and multiplier to use in this case. The learned Judge used $600 per month as his multiplicand. It is true, as Mr. Abdullah said, that in computing special damages for loss of earnings, the learned Judge used the income of the plaintiff at $1,000 per month. At that time, the plaintiff was unemployed. But, as regards the future, the plaintiff must mitigate his loss. Also, it is to be noted, there is no evidence that the plaintiff will not be employed. With full employment in Singapore, there is no reason why the plaintiff should not find a job on land to earn $600 per month. He can, if he wants to, undergo training for another vocation and even earn a better salary. Thus, we are of the view that it is not wrong to use a multiplicand of $600 per month.

As for the multiplier, the plaintiff was about 35 years at the date of the trial. Even if he were to retire at 55 years, he has 20 years of working life. However, in choosing the appropriate multiplier, we have to discount for "contingencies and advance payment". In *Lai Wee Lian's* case, (*supra*) the Privy Council considered 15 years as the appropriate

multiplier for the appellant who had 28 years before she reached the age of 55. In the present appeal, we think that 14 years would be the suitable multiplier. This would be consistent with the period taken in *Low Kok Tong* v. *Teo Chan Pan*[4] and the *McGuinness* case (*supra*). So, we apply the multiplier 14 to the multiplicand of $600 to arrive at the sum of $100,800.

Finally, the defendants appealed on the award of $10,000 for the costs of the future renewal of the artificial leg. Objections were raised that it was not claimed in the statement of claim, that there was no evidence that the artificial leg would have to be changed periodically and as to the costs for replacement and repairs. The short answer is that there is the averment in the statement of claim that by reason of the negligence of the defendants the plaintiff claims damages. Under this general claim counsel for the plaintiff was entitled, which he did at the close of the case in his submission on damages, to make a claim for such costs. As for quantum, he relied on the *McGuinness case* (*supra*). Roberts C. J. in that case gave the plaintiff a reasonable sum for the cost of replacement of his artificial limb in future years and for necessary repairs to it from time to time. In that case the plaintiff did produce two letters from the Deputy Commissioner of the Department of Veterans' Affairs, Brisbane, Australia which referred to replacement, repairs, and the costs thereof. The learned Chief Justice however increased the sum to make allowance for stump socks and other expenses such as travel and subsistence, involved in visits for repairs. He awarded B$18,144.

We are of the opinion that a Judge can take judicial notice that an artificial leg would have to be repaired and replaced from time to time. As for the quantum, the learned Judge was guided by the decision in Brunei. He came to the conclusion that a reasonable sum for the costs of future renewal was $10,000. We agree with him.

For the reasons we have given, the appeal of the defendants is dismissed. The cross-appeal is allowed. We increase the special damages for loss of earnings to $38,000 and the future loss of earnings to $100,800. There will be costs to the plaintiff on the appeal and cross-appeal.

Appeal dismissed;
Cross-appeal allowed.

Solicitors : *Godwin & Co.; Murphy & Dunbar.*

PETER GOMEZ v. BRENTNALL BEARD & CO. (S) PTE. LTD.

[O.C.J. (Rajah J.), March 21, 1985]

[Singapore – Suit No. 556 of 1977]

Contract – Insurance agent and brokers – Commissions on insurance premiums collected – Confirmation letter in dispute – "Remuneration" – Interpretation – Frustration.

Insurance – Insurance agent and brokers – "Remuneration" – Commission on premiums.

In this case, the plaintiff, an insurance agent, claimed against the defendants, insurance brokers, a 5% commission of the total insurance premiums collected by them from the Bangladesh Shipping Corporation ("BSC"). Sometime in 1973 the plaintiff met his client one Suresh who informed him that BSC was looking for a suitable and reliable insurance company to insure its vessels, which were under some form of financing by a bank. Through the introduction of the plaintiff and Suresh, the defendants became acquainted with the bank, which appointed the defendants as insurance brokers regarding insurance on ships owned by BSC and financed by the bank. Following these arrangements, Baxter, the defendants' managing director, wrote a letter dated December 19, 1973 to Suresh summarising the commissions payable to Suresh (10%) and the plaintiff (5%). This letter was the basis of the plaintiff's claim and was disputed by the defendants, who contended that he was not entitled to the commission. Two issues came before the court: (1) the interpretation of the letter (AB3) signed by Baxter and (2) whether the commission contract had been frustrated. The defendants argued that the matter turned on the word "remuneration".

Held: (1) it is a rule of construction, unless otherwise indicated in the document, that the word "remuneration" should be given the same meaning throughout the whole document. The word means what is earned based on a percentage of the premiums collected. Therefore what document AB3 says is that 10% remuneration or 10% brokerage is to be paid to Suresh, 5% brokerage to the defendant company and 5% brokerage to the plaintiff, and each of the 3 parties is entitled to the said percentage;

(2) the plaintiff's claim is simply one based on the premiums collected. It is common ground that the defendants did collect premiums on insurance and re-insurance concerned. In the circumstances, judgment must be given for the plaintiff in the sum of US$24,290.32 with interest at 10% from date of issue of writ to date of judgment on March 21, 1985 and with costs.

CIVIL SUIT.

Prabhakaran Nair for the plaintiff.
Chia Quee Khee for the defendant.

Cur. Adv. Vult.

Rajah J. : At the outset of this trial both counsel had agreed on a statement of facts and what they thought in their view were the issues in this